

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE: WORLD TRADE CENTER  
DISASTER SITE LITIGATION  
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Docket No.: 21 MC 100  
21 MC 103 (AKH)

THIS DOCUMENT APPLIES TO ALL  
WORLD TRADE CENTER DISASTER SITE  
LITIGATION  
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**DECLARATION IN SUPPORT  
OF JOINT MOTION FOR  
VOLUNTARY DISMISSALS**

Stephanie S. McGraw, an attorney duly licensed to practice before the courts of the State of New York and admitted *pro hac vice* to practice before this Honorable Court, hereby declares under penalty of perjury:

1. I am associated with the law firm Morrison Mahoney, LLP, counsel for Defendant SURVIVAIR in the above-captioned matters.
2. This Declaration is made upon my personal knowledge and a review of the files maintained by the law firm for the prosecution of the plaintiffs' claims herein, including this Court's written orders regarding the same.
3. Morrison Mahoney, as counsel for defendant SURVIVAIR and Worby Groner Edelman & Napoli Bern (hereinafter "WGENB"), as co-liaison counsel for plaintiffs in the above captioned matters, executed their court approved settlement agreement on or about November 30, 2010. *See* Survivair Settlement Agreement, annexed hereto as "**Exhibit 1**".
4. As noted, this Court approved the Survivair Settlement Agreement (hereinafter "SSA") on November 15, 2010. *See* Order Approving Settlements, annexed hereto as "**Exhibit 2**".
5. Pursuant to the terms of the paragraphs 3, 4, and 8 of the SSA, plaintiffs who were not issued respirators, or who were issued a type of respirator that was not manufactured by SURVIVAIR, were deemed ineligible to participate in the settlement with SURVIVAIR (hereinafter "Ineligible Plaintiffs"). *See* **Exhibit 1**.

6. After a careful review of core discovery responses by both WGENB and Morrison Mahoney, the list Ineligible Plaintiffs has been verified, and is annexed hereto as “**Exhibit 3**”.

7. Pursuant to paragraph 19 of the court approved SSA, these Ineligible Plaintiffs’ causes of action against SURVIVAIR must be voluntarily dismissed with prejudice as against SURVIVAIR only. The instant motion concerns these dismissals. See **Exhibit 1**.

8. By this Court’s January 3, 2011 Order Denying Federal Rule 41(A)(1) Motions of Voluntary Dismissal, plaintiffs were “given leave to seek voluntary dismissal by motion, if fewer than all Defendants are to be dismissed....” See January 3, 2011 Order Denying Federal Rule 41(A)(1) Motions of Voluntary Dismissal, annexed hereto as “**Exhibit 4**”.

9. As both parties here seek dismissal as to fewer than all Defendants, we submit the instant motion.

10. Accordingly, plaintiffs respectfully request that this Court:

- a. grant the proposed Order of Voluntary Dismissal annexed hereto as “**Exhibit 5**”;  
and award
- b. such other and additional relief as this Court deems just and proper.

11. Counsel for WGNEB joins in this request.

Dated: New York, New York  
November 1, 2011

Respectfully submitted,

**MORRISON MAHONEY LLP**

By: *Stephanie S. McGraw*  
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**ATTORNEY'S DECLARATION/AFFIRMATION OF SERVICE**

Stephanie S. McGraw an Attorney duly licensed to practice before the Courts of the State of New York, hereby affirms/declares the following under penalty of perjury:

I am associated with the law firm Morrison Mahoney, LLP and as such represent the Defendant SURVIVAIR in the within action. On November 1, 2011, I duly served a true copy of the within DEFENDANT'S NOTICE OF MOTION, DECLARATION OF STEPHANIE S. MCGRAW on all attorneys of record in this matter in the Court's Electronic Case Filing System.

Stephanie S. McGraw  
Stephanie S. McGraw (SM7310)